IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A Minnesota Corporation,

and

CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE, a Delaware Corporation,
Appellants,

v.

ZEL S. RICE, ROBERT T. HUBER,
JOSEPH SWEDA, REBECCA YOUNG,
WAYNE VOLK, LEWIS V. VERSNICK, and
BRONSON C. LA FOLLETTE,
Appellees.

On Appeal From The United States District Court
For The Western District Of Wisconsin

BRIEF FOR THE APPELLEES

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SUMMARY OF ARGUMENT

Wisconsin law does not discriminate against interstate commerce. Vehicles over 55 feet in length are prohibited. There are certain exceptions which benefit agriculture and industry, all of which promote valid police power purposes.

Prohibition of overlength vehicles does not produce an undue burden on interstate commerce. The court has sometimes applied a balancing test to cases not involving highway safety. In such cases, the court has distinguished the highway safety cases.

The prohibition of twin trailers does not prevent interlining or exchange of trailers between trucking companies. It was only because the Illinois mud guard requirement prevented interlining that the court in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), found an undue burden on interstate commerce.

Wisconsin's chief concern is over the safety hazards posed by an extra 10 feet of truck length. Length bears an obvious relation to safety. Since longer vehicles or even triple trailers might be shown to be safe, the decision as to what lengths to permit involves judgment and discretion. The court should leave this decision to the legislature and should not substitute its judgment for that of the legislature.

ARGUMENT

I. Wisconsin's Regulatory Scheme Does Not Discriminate Against Interstate Commerce.

The Wisconsin statutes and administrative regulations, relative to size of vehicles upon Wisconsin highways, are printed in an appendix at the end of Appellants' brief. Wisconsin restricts the overall length of a two vehicle combination to 55 feet. Section 348.07(1), Wis. Stats. This applies to the truck tractor-trailer combination commonly referred to as a "semi." Combinations of more than two vehicles are prohibited without a permit. Section 348.08(1), Wis. Stats. The State Highway Commission is authorized to issue trailer train permits for combinations of more than two vehicles up to 100 feet in length. Section 348.27(6), Wis. Stats. Because of the obvious dangers of such lengthy combinations, the Highway Commission has chosen to limit the issuance of such permits to the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair. Wis. Adm. Code section HY 30.14(3)(a). The Appellants were denied permits for their 65 foot twin trailer combinations under the above statutes and regulations. Wisconsin's chief concern is the safety hazard of such overlength vehicles.

The Highway Commission may also issue permits to industries and their agents to operate oversize vehicles "in connection with interplant, and from plant to state line, operations in this state." Section 348.27(4), Wis. Stats. The purpose of this statute is to allow a manufacturer with two plants in Wisconsin to ship between his two plants in oversize vehicles. This in

effect makes the highway between the two plants a part of the assembly line process. Examples of this are the shipment of car bodies by American Motors from its body plant to its assembly plant, and the shipment by the Schlitz Brewing Company of empty beer cans from its can producing plant to its brewing and canning plant. It is probable that these interplant permits were authorized to benefit American Motors, the smallest of the automobile manufacturers, to assist this company in its competition with its giant competitors. Appellants argue this is blatantly discriminatory to the interstate commerce of an out-of-state manufacturer. As to the permits for plant to state line shipments, this law actually favors interstate commerce because such movements are, in fact, interstate in nature. As to plant to plant permits, the Highway Commission could not issue such permits to an out-of-state manufacturer with out-of-state plants, because movements between such plants would be beyond the jurisdiction of this state. However, Appellants perceive a discrimination against an out-of-state manufacturer who wants to ship his goods into or through Wisconsin. Regardless of whether the court would think this a significant discrimination against interstate commerce, it is clear that Appellants have no standing to raise this question because it does not directly affect their rights. The only person who could raise such question would be a person with a plant in another state who applied for an interplant permit to haul from his out-of-state plant to his plant in Wisconsin. Appellants do not fall into this category. It is clear they are trying to raise a constitutional question on a point which affects the rights of others. The law is clear that a party must try his own case and may not urge the unconstitutionality of a statute on a point not affecting his rights. A party may not challenge the constitutionality of a statute on the ground that it may be applied unconstitutionally to others. *Broaderick v. Oklahoma*, 413

U.S. 601 (1973); *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

Permits may also be issued to auto carriers operating haulaways specially constructed to transport motor vehicles. Such auto carrying vehicles may be up to 65 feet long. Section 348.27(5), Wis. Stats. Appellants argue this is a subtle discrimination to benefit Wisconsin automobile manufacturers. These permits are not limited to intrastate commerce. They are not limited to Wisconsin auto carriers or Wisconsin automobile manufacturers. These permits are available to any automobile carrier, hauling automobiles for any manufacturer including out-of-state manufacturers. Such permits benefit the whole industry nation-wide from the manufacturer to the carrier to the dealer to the consumer. This extra length for auto carriers was probably authorized for the benefit of that part of the trucking industry which transports automobiles, to help them remain in business against the growing competition of the railroads which threaten to take such business away from the truckers. At page 276 of the Appellants' appendix, there is a picture of one of these auto carrying vehicles. It consists of a truck which carries three automobiles on its own superstructure, and a trailer which carries four automobiles. Here, the front vehicle is actually a truck upon which a part of the cargo is directly loaded. To shorten this vehicle combination 10 feet would reduce its carrying capacity by two automobiles. The very nature of the cargo and the configuration of the vehicle are probably the reasons why the 65 foot length was allowed.

Appellants also point out that the 55 foot twin trailers are authorized by Wisconsin law for hauling milk. Wis. Adm. Code section HY 30.18(3). This regulation authorizes use of a twin trailer combination no more than

55 feet long for hauling milk from the point of production to the point of first processing. This benefits the farmer. These trips may be intrastate or interstate. There is no discrimination against interstate commerce. Appellants also point out that the paper industry benefits from exemptions for the hauling of pulpwood. Pulpwood is grown on farms. This exemption is for the benefit of farmers.

This regulatory scheme does not discriminate against interstate commerce either explicitly or implicitly. None of these statutes or regulations is directed at interstate commerce. These statutes and regulations are applicable without regard to the interstate or intrastate nature of the commerce involved. Nothing in these statutes or regulations indicates a purpose to isolate local industry or agriculture from foreign competition. See *Best v. Maxwell*, 311 U.S. 454 (1940); *Minnesota v. Barber*, 136 U.S. 313 (1890); *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951); *Washington State Apple Advertising Com. v. Holshouser*, 408 F. Supp. 857 (E.D. N.C. 1976). Appellants appear to be taking the position that, if the State makes exceptions for certain industries, the State must make similar exceptions for others. Their argument seems to be if you do it for others, you must do it for us. This is not the law. Exceptions are a standard statutory device. Reasonable classifications may be made and this does not constitute a denial of equal protection. Such exceptions need only be designed to promote a proper police power purpose.

Both the police power and the taxing power may be exercised in such a way as to benefit farmers and industry. Many cases have sustained the validity of favored treatment of farmers against a charge of denial of equal protection. In *Northern Wis. Co-operative Tobacco Pool v. Bekkedal*, 182 Wis. 571, 197 N.W. 936

(1924), the court upheld the co-operative marketing law as a proper exemption given to farmers, which did not constitute a denial of equal protection. In *Wis. Truck Owners Ass'n. v. P.S.C.*, 207 Wis. 664, 242 N.W. 668 (1932), the court upheld a ton-mile tax exemption of motor vehicles used or operated exclusively in transporting dairy or other farm products, as against a charge of denial of equal protection. In *State v. Wetzel*, 208 Wis. 603, 243 N.W. 768 (1932), the court upheld the exemption of implements of husbandry from length restrictions applicable to other vehicles on the highway, as against an equal protection challenge. In *Oregon v. Pyle*, 226 Or. 485, 360 P. 2d 626 (1961), the court upheld a statute allowing heavier axle weights for trucks hauling logs, poles or piling than for trucks hauling other products. The court held the special treatment afforded the haulers of these timber products was justified on the ground the legislature desired to foster the logging industry, and that it is within the power of the legislature to grant special benefits to one branch of industry in order to promote the public good. In *Sproles v. Binford*, 286 U.S. 374 (1932), a Texas law regulated the size and weight of motor vehicles. It was challenged as a denial of equal protection because it exempted from size limitations implements of husbandry, well drilling machinery, and road building machinery. The court upheld the law. The law also favored railroads by allowing longer vehicles to be used for hauling to and from a railroad receiving, loading, or unloading point. The court held this permissible because the state has a vital interest in the appropriate utilization of the railroads which serve its people.

It is clear from these cases that the police power may be exercised in such a way as to benefit agriculture, lumbering, and other local industry, and that regulation of the use of the highways may favor such industries.

II. Prohibition Of Overlength Vehicles Is Not An Undue Burden On Interstate Commerce.

A. A balancing test is sometimes used.

Appellants argue that the proper legal standard to be applied is a balancing of the State's interest in highway safety as against the burden on interstate commerce. Where highway safety was involved, the court has not followed such balancing test. In cases where the balancing test was applied, the court has distinguished the safety cases. An analysis of the pertinent cases will be helpful.

In *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938), the court held that a state may impose uniform size and weight limitations to promote safety upon its highways. Congress could determine whether the burdens of state regulation are too great, but this is a legislative, not judicial function. Courts do not sit as legislatures and cannot act as Congress does when, after weighing conflicting interests, it determines when and how much the state regulatory power shall yield to the large interests of national commerce. A court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied, or to choose that one which, in its opinion, is best adapted to all the diverse interests. This is not a judicial choice and constitutionality is not to be determined by weighing in judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard. Here, the court clearly refused to apply a balancing test. The rule here set forth has not been changed by subsequent decisions, at least as far as highway safety regulations are concerned. This was followed in *Maurer v. Hamilton*, 309 U.S. 598 (1940). In *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949), the court followed both *Barnwell* and *Maurer* and held that where traffic control and use of highways is involved and there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce.

In *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), the court did apply a balancing test. There, the question was whether a state law limiting the length of trains constituted an undue burden on interstate commerce. The court found that the benefit of short trains in reducing accidents due to slack action was more than offset by the increased number of accidents caused by the running of more trains. The court also found a great burden on interstate commerce due to the necessity of breaking up long trains for operation through the state and then reassembling them into long trains again on leaving the state. The court concluded that such regulation passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of an accident. The court held that examination of all relevant factors makes it plain that the state interest is outweighed by the interest of the nation in an adequate, economical and efficient railway transportation service, which must prevail. Here, the court clearly applied a balancing test, something they had refused to do in *Barnwell*. However, they distinguished that case pointing out that that case concerned the power of the state to regulate the use of its highways, a legislative field over which the state has far more extensive control than over interstate railroads.

In *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), an Illinois statute required trucks to have a curved mud guard rather than the conventional mud flap. The court said the law must be upheld unless the total effect of the law as a safety measure is so slight as not to outweigh the national interest in interstate commerce. There was substantial cost involved in installing the new mud guards and the evidence was in conflict as to their safety benefits. The court concluded that they would have to sustain the law if only these cost and disputed safety factors were involved. However, the court pointed out that the mud guard requirement interfered with interlining which is the interchanging of trailers between an originating carrier and another carrier. Because of this interference with interlining, the court held the mud guard requirements an unconstitutional burden on interstate commerce.

Brotherhood of Loc. F. and E. v. Chicago, R. I. and P. R. Co., 393 U.S. 129 (1968), involved the constitutionality of the Arkansas full train crew law. The evidence was conflicting as to the effect of the full crew requirement on safety. The court concluded that such questions of safety were for the legislature. The court will not resolve conflicts in the evidence against the conclusion of the legislature. The court refused to balance the increased costs to the railroad against the safety of railroad employes and people using the highways. The court concluded these disputes should be worked out by the legislature.

In *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), an Arizona law required cantaloupes grown in Arizona to be packed in that state. Such packing had to be done in packing sheds. The grower had such packing facilities in California, but none in Arizona. To build such facilities in Arizona would have cost $200,000. The state interest

involved lay in having these high quality products labeled as Arizona cantaloupes, rather than California cantaloupes. The court held that it was an undue burden on interstate commerce to require the grower to go into the local packing business for the sake of enhancing the reputation of other producers within the state. Here, the court applied a balancing test and found the burden on interstate commerce outweighed the benefits of the law to Arizona. However, the court pointed out they were not dealing with legislation in the field of safety where the propriety of local regulation has long been recognized.

B. Prohibition of twin trailers does not prevent interlining.

Interlining is the practice of exchanging trailers between trucking companies. In *Bibb v. Navajo Freight Lines, Inc., supra*, the court struck down the Illinois mud guard law because it prevented interlining. However, the Wisconsin law on 65 foot twin trailers does not prevent interlining. A vehicle without the special mud guards could not be operated in Illinois. Appellants' trailers may freely be hauled through Wisconsin, but, of course, they must be hauled one at a time. The only prohibition is that they cannot be doubled up. This does not prevent interlining, it just makes it more expensive. In *Bibb*, the court said that if only the extra expense and the disputed safety factors were involved, it would sustain the law. It was only the interference with interlining which made the law unconstitutional. Since Wisconsin's ban on 65 foot twin trailers does not prevent interlining, this case stands as an authority for sustaining the Wisconsin law.

Illinois was the only state which required the curved mud guards. They were legal, but not required in other

states, except Arkansas which prohibited their use. Thus, the curved mud guard was legal in all states but one. The situation with 65 foot twin trailers is not the same. Many states allow them, but many states prohibit them. At page 278 of the Appendix in this case, is a map which is part of the evidence in this case. Shown in blue are the states which permit 65 foot twin trailers. In Iowa, they are limited to 60 feet. In New York, Massachusetts, and Florida, 65 foot twin trailers are permitted only on turnpikes which include the interstate highways. Shown in green, Mississippi, Georgia, and New Jersey allow twin trailers of less than 60 feet. Shown in yellow, are the states which prohibit twin trailers entirely.

Wisconsin law does prevent running 65 foot twin trailers from Chicago through Wisconsin to Seattle. This cannot be done through Iowa either. Similarly, 65 foot twin trailers cannot be run all the way from Chicago to Florida. Although they can be run on Florida turnpikes, they cannot get there from Chicago, because Tennessee, Mississippi, Alabama, and Georgia do not allow it. Similarly, 65 foot twin trailers cannot be run from Ohio to New York and Massachusetts where they are legal, because Pennsylvania will not allow it. Also, they cannot be run from Ohio to Maryland and Delaware where they are legal, because they cannot get through Pennsylvania and West Virginia. Seventeen states prohibit 65 foot twin trailers and three more states limit their use to certain highways. This is nothing like the situation in *Bibb* where only one state required curved mud guards. In that case, only one state was out of step with the others. In the present case, some twenty states are out of step with what are predominately western states. In this case, the court is not ruling on the constitutionality of the law of one state, but in effect, may be ruling on the law of some nineteen other states.

C. Wisconsin is chiefly concerned with the extra length of twin trailers.

Appellants have been denied permits for their twin trailers primarily because they exceed statutory specification of 55 feet as a maximum length of vehicles. Vehicle size bears a direct relation to safety. Early cases recognized that vehicle size affects safety and that excluding larger vehicles promotes safety. *Buck v. Kuykendall*, 267 U.S. 307 (1925); *Morris v. Duby*, 274 U.S. 135 (1927). In *Sproles v. Binford*, 286 U.S. 374 (1932), the court held that a state may act to prevent the hazards due to excessive size of vehicles, that limitations of size are subjects within the broad range of legislative discretion, and that the state may in this way discourage the use of vehicle trains or combinations. Thus, to exclude Appellants' vehicles both because of excessive length and trailer train configuration is permissible in the interest of safety. Appellants have shown that 65 foot twin trailers have as good a safety record as other large vehicles. Officials of a number of states and the federal government are convinced that such vehicles are safe enough to be allowed on the highway. However, the concern of people in Wisconsin and their legislators centers around the commingling of vehicles upon the highway with trucks which are 10 feet longer than at present, and the ability of other drivers to pass, such vehicles. See page 29 of the deposition of Robert T. Huber, Chairman of the State Highway Commission in the appendix printed at the end of this brief. The passing of a long truck poses obvious hazards. In bad weather, the car driver may be almost blinded with an obstructed windshield. No matter what the relative speed of the two vehicles, in the case of twin trailers, there would be an extra 10 feet of this condition. Wisconsin drivers would prefer to avoid this. All drivers have experienced this at some time. Their fear of this is not irrational. The

safety factors are obvious. Wisconsin can properly limit the length of vehicles on its highways to minimize this hazard.

D. The court should leave this problem to the legislature.

In *Barnwell*, the court held that states may regulate highway safety and that Congress may determine whether the burden on interstate commerce is too great. However, that is a legislative and not judicial function. The courts will not weigh the relative merits in the judicial scales, and will uphold the legislation if it has a rational basis. In the case presently before the court there is a sharp conflict in the evidence. While twin trailers have a good record in other states, there are obvious safety hazards in passing the extra length in bad weather. The people of this state have shown great concern over these hazards. There is room for a difference of opinion and the opposition of the people is not irrational. In the *Southern Pacific* case, the court admittedly weighed the state interest in train safety against the national interest in interstate commerce and struck down the train length law as an undue burden on interstate commerce. In so doing, the court carefully distinguished the situation in *Barnwell* and pointed out that a state has far more control over highways than railroads.

In *Bibb* the court said it would uphold the law unless it can see that the benefits of the safety measure are so slight as not to outweigh the national interest. The court pointed out that because of the impact upon interlining, this is one of the few cases where the burden on commerce outweighs the safety measure. We have pointed out that this is not applicable to the case presently before the court, because here interlining is

possible although not as profitable and the court in *Bibb* made it clear that high cost alone is not enough to overturn a law. In the *Full Crew Law* case, the court retreated from its balancing test and held that the evidence in that case left little doubt that the question of safety is essentially a matter of public policy which under our constitutional system can only be resolved by the people acting through their elected representatives. The court's responsibility does not authorize it to resolve the conflicts in the evidence against the conclusion of the legislature. The court left the problem to be worked out in the legislature.

The people of the State of Wisconsin and their legislators have expressed great concern over the extra length of these 65 foot vehicles, and the obvious hazards involved in passing. See the portion of the testimony of Robert T. Huber, Chairman, State Highway Commission, printed in the Appendix at the end of this brief. In view of this concern, we think the court should leave the present long truck controversy to be worked out by the legislature and the people of this state. This seems especially appropriate where a total length of 70 or 75 feet would probably also be safe. Also, triple trailers, perhaps 85 feet long, may come into use. If these were shown to be safe, would the court approve of them also. Should the court make the final decision as to what is safe? The problem is where to stop. We submit that the choice of how far to go is a matter of legislative discretion, and the court should not substitute its judgment for that of the legislature.

CONCLUSION

Wisconsin's prohibition of 65 foot twin trailers does not discriminate against interstate commerce. Exceptions are based upon valid police power purposes. There is no undue burden on interstate commerce. Interlining is not impossible as in *Bibb*. The court should not apply a balancing test, but should leave this problem to be worked out by the legislature.

Respectfully submitted,

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APPELLEES' APPENDIX

DEPOSITION OF ROBERT T. HUBER, CHAIRMAN, STATE HIGHWAY COMMISSION.

* * *

26 **EXAMINATION**

BY MR. HARRIMAN:

Q Mr. Huber, from your years of experience with the Legislature and from your years of experience on the Highway Commission, will you tell us what your assessment is of the attitude of the people of the State of Wisconsin regarding twin trailers?

A I suppose you could describe the attitude or the basis for the attitude as one between the constituents and the legislative representatives. That is to say, the Legislature has on several occasions, '65 and '71 and I'm not sure about '73, considered legislation to legalize the general use of 65-foot trucks on divided highways.

The constituent mail was substantially in opposition. The general public, if you can judge by the mail that the legislators get and by the discussions I had with my colleagues at that time and since on the Commission, is a strong evidence of opposition to going to that kind of legislation and I suppose the attitude of the Wisconsin public is gleaned
27 from the attitude of the constituents who form the opinion of the legislators and cause them to vote the way they do.

Q. Do you want to expand on that any further?

A Well, I think it's pretty clear that the legislators, especially those that want to continue in office, pay attention to their constituents. There is no doubt in the minds of any one of the legislators in their district that the overwhelming amount of mail and the general response, telephone and otherwise, is in opposition to the proposal.

Q And as a result of this proposal to the Legislature to authorize the general use of twin trailers, these proposals have not passed?

A The proposals have not passed and that forms the basis for the posture of the Highway Commission as a result.

Q Well, then, the second question; would you spell out why the Highway Commission denied the twin trailer permits that are involved here, the permits to these two plaintiffs involved in this case?

A There is something that is very clear in the minds of the Legislature and that is that the State agencies are to do the will and bidding of the lawmaking body, the Legislature. The clear legislative intent having been established on several occasions on bills to legal-
28 ize twin trailers causes the Commission to continue to hold its posture in not granting permits even though they may have that clout or authority to do so in some respective areas. I think the legislative intent is clearly

established and has been in the case — in this issue as a legislative directive to the Highway Commission.

Q Do you conclude that the Legislature does not intend or desire at this time that the Highway Commission should authorize the general use of twin trailers on Wisconsin highways?

A Well, another example of that, and you are asking if that is my conclusion, which is correct, and most recently — I think it was in the '73 session, some of the dairy people came in and they had a milk plant to which the milk is to be delivered and this involves Minnesota and the northwest part of Wisconsin where they wanted to delivery quantities of milk in twin trailer fashion.

The milk people came to us and we told them their recourse, the solution was down at the Capitol. We then attended a meeting of the Agricultural Committee with the milk people and again it was brought home very clearly to us, the Commission, as a result of
29 that discussion that the legislative members in attendance at that meeting by no means wanted the Commission to take any such steps and that their position was still the same, in opposition to granting the use of twin trailers in that fashion.

Q You have used the word constituents, and we understand that to mean the people who write to and vote for the legislators; the public, in other words.

Do you know from your own experience with this — you pointed out these people object to the introduction of twin trailers. Do you know from your own experience more specifically what they are afraid of, if they are afraid of something?

A As I reflect upon the kinds of letters, and that is slightly vague now in my mind, in the days when I was still in the Legislature yet their concern seemed to center around a commingling of vehicles, in this case 10 feet longer in the case of the trucks, and the ability to be able to pass such a vehicle caused a great deal of concern among the people at that time.

Apparently it is still one of the bases for the opposition of the legislators because in talking to them individually since these are still the kinds of letters they are receiving.

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